

REMARKS

Claims 2 - 11, 13 - 23, 25 - 31, and 33 - 41 are currently pending in the instant application. Applicant acknowledges the allowance of claims 2 - 11, 13 - 23, 25 - 31, and 33 - 35. Claims 36 - 41 are rejected on the ground of nonstatutory obviousness-type double patenting. Reconsideration and allowance of claims 36 - 41 in view of the following remarks is respectfully requested.

Claims 36 - 39 are rejected on the ground of nonstatutory obviousness-type double patenting over claims 1, 6, and 7 of U.S. Patent No. 6,805,117 to Ho et al. ("the '117 patent").

With respect to claim 36, the examiner stated that "[a]lthough the conflicting claims are not identical, they are not patentably distinct from each other because Claim 36 of the instant application is broader than patented claim 1 of patent '117, therefore, patented claim 1 of patent '117 "anticipates" instant application claim 36." The examiner further stated that the limitations of claim 37 can be found in claims 6 and 7 of the '117 patent.

With respect to claim 38, the examiner stated that "[a]lthough the conflicting claims are not identical, they are not patentably distinct from each other because Claim 38 of the instant application is broader than patented claim 1 of patent '117, therefore, patented claim 1 of patent '117 "anticipates" instant application claim 38." The examiner further stated that the limitations of claim 39 can be found in claims 6 and 7 of the '117 patent.

It is respectfully submitted that claims 36 - 39 of the instant application are patentably distinct from claims 1, 6, and 7 of the '117 patent. More specifically, the headgear recited in each of claims 36 and 38 of the instant application includes a headpiece having "a substantially frusto-conical shape defined by a first contour panel and a second contour panel". This frusto-conical shape helps the headpiece adjust to the patient's head without the need for additional adjustment straps.

In contrast, claim 1 of the '117 patent is directed to a headpiece comprised of a number of panels (18) which are not substantially frusto-conical in shape. (See FIG. 1; column 2, lines 52 to column 3, line 4.) Claim 1 recites a front adjustment strap and a rear adjustment strap each of which are connected to the headpiece. Claim 1 further recites that "the headpiece, front

adjustment strap, and rear adjustment strap define a cap that fits over such a patient head". As best seen in FIGS. 1 and 4 of the '117 patent, this "cap" does not have "a substantially frusto-conical shape defined by a first contour panel and a second contour panel". As such, the cap requires that, as recited by claim 1, the front adjustment strap and the rear adjustment strap be connected together and adjusted to cause "the headpiece to fit a patient's head".

Because claims 36 and 38 of the instant application are each directed to a headgear having a frusto-conical shaped headpiece which does not require a front adjustment strap and/or a rear adjustment strap to adjust to the shape of the patient's head and because claim 1 of the '117 patent is directed to a headgear having a nonfrusto-conical headpiece the shape of which is adjusted using front and rear adjustment straps, it is respectfully submitted that claims 36 and 38 of the instant application are each patentably distinct from claim 1 of the '117 patent.

Additionally, claims 36 and 38 each recite "a crossover strap extending from one of the first or the second contoured panel to a remaining other one of the first or the second contour panel." As discussed above, the frusto-conical shape defined by the first contour panel and the second contour panel tends to automatically form to the patient's head. As best seen in FIG. 3 of the instant application, the crossover strap provides stability by preventing downward displacement of the headgear relative to the patient's head.

In contrast, claim 1 of the '117 patent fails to recite a crossover strap. As discussed above, claim 1 recites that "the headpiece, front adjustment strap, and rear adjustment strap define a cap that fits over such a patient head". As best seen in FIG. 1 of the '117 patent, the cap is comprised of three panels (18) which are adjusted with the front and rear adjustment straps to fit the contour of the patient's head.

Because claims 36 and 38 of the instant application are each directed to a headgear having "a crossover strap" and because claim 1 of the '117 patent is directed to a headgear that does not have a crossover strap, it is respectfully submitted that claims 36 and 38 of the instant application are each patentably distinct from claim 1 of the '117 patent.

In the instant application, claim 37 depends from allowable claim 36 and claim 39 depends from allowable claim 38. In the '117 patent, claims 6 and 7 depend from claim 1.

Accordingly, it is believed that claim 37 and claim 39 are allowable for the same reasons discussed above in conjunction with claims 36 and 38, respectively, of the instant application.

Claims 40 - 41 are rejected on the ground of nonstatutory obviousness-type double patenting over claims 20, 23, and 24 of U.S. Patent No. 6,805,117 to Ho et al. ("the '117 patent").

With respect to claim 40, the examiner stated that "Claim 40 of the instant application is broader than patented claim 20 of patent '117, therefore, patented claim 20 of patent '117 "anticipates" instant application claim 40." The examiner further stated that the limitations of claim 41 can be found in claims 23 and 24 of the '117 patent.

It is respectfully submitted that claims 40 - 41 of the instant application are patentably distinct from claims 20, 23, and 24 of the '117 patent. More specifically, the system for delivering a breathing gas to a patient recited in claim 40 of the instant application includes a headgear with a headpiece having "a substantially frusto-conical shape defined by a first contour panel and a second contour panel". Claim 40 also recites that the system includes "a crossover strap extending from one of the first or the second contoured panel to a remaining other one of the first or the second contour panel."

In contrast, claim 20 of the '117 patent (like claim 1 of the '117 patent) fails to recite a headpiece having "a substantially frusto-conical shape" and further fails to teach a headgear having a crossover strap. Accordingly, it is believed that claim 40 of the instant application is allowable for the same reasons discussed above in conjunction with claims 36 and 38 of the instant application.



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In the instant application, claim 41 depends from allowable claim 40. In the '117 patent, claims 23 and 24 depend from claim 20. Accordingly, it is believed that claim 41 is allowable for the same reasons discussed above in conjunction with claim 40 of the instant application.

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,

By Richard J. Coldren
Richard J. Coldren
Reg. No.: 44,084
Tel. No.: (724) 387-4455
Fax No.: (724) 387-5021

RESPIRONICS, INC.
1010 Murry Ridge Lane
Murrysville, PA 15668-8525